IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4879 OF 2005

Mahesh Gulathi ...Applicant

Versus

Ramsagar P.Tripathi & Anr. ...Respondents

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Mr.S.V.Marwadi for Applicant.

Respondent No.1 present in Court.

Mr.Ashutosh C.Tripathi for Respondent No.1.

Mrs.M.M.Deshmukh, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 16, 2005.

P.C.

1. Heard Counsel for the parties.

2. Rule. Rule made returnable forthwith by consent. Mr.Tripathi waives notice for Respondent No.1. Mrs.Deshmukh, A.P.P. waives notice for Respondent No.2.

3. As short question is involved, Application is taken up for final disposal forthwith, by consent.

4. The only question that requires to be considered in the present Application is: whether the Trial Court ought to have given one opportunity to the Applicant to examine Defendant witnesses, as was the request made before the Trial Court on 25th July 2005. The Roznama produced on record indicates that on 12th July 2005, Applicant examined D.W.1 Mohan Laxman Chitale. The complainant declined to cross-examine the said witness. Matter was adjourned to 18th July 2005 to be taken up at 2.45 p.m. for other defence witnesses. On 18th July 2005, however, it appears that the matter was adjourned, as accused remained absent. The adjourned date was 25th July 2005. On the adjourned date, the accused was initially absent, for which, written application for adjournment was made by the Advocate, which was granted on payment of cost of Rs.200/- (Rupees Two Hundred) to the complainant. That order is not

produced before me. It appears that the said order was passed at 2.45 p.m. Once again, another order came to be passed by the Trial Court at 4.00 p.m. whereby, request made on behalf of the Applicant/accused to adjourn the hearing was rejected. Instead, the Court ordered that the evidence of accused is closed. There is one more order passed on 25th July 2005 presumably at 5.00 p.m. By this order, the Court rejected the request of the accused to adjourn the matter, as his Advocate was absent. These orders are the subject matter of challenge in the present Application.

5. The grievance of the Applicant is that the Applicant has not been offered fair opportunity to defend himself. After hearing Counsel for the Applicant and Respondent No.1 and going through the Roznama, I am in agreement with the approach adopted by the Trial Court that the matter pertained to year 2002 and one opportunity was already granted to the Applicant by adjourning the case to 18th July 2005 and once again, to 25th July 2005. Even on 25th July 2005, the Trial Court entertained the request of accused on three

different occasions for adjournment, making it clear that no adjournment was possible. To that extent, the approach is right. However, as the litigant should not suffer for the mistake of the Advocate, I am inclined to show indulgence to the Applicant, by giving him one more opportunity before the Trial Court, but on condition that the Applicant will compensate the Respondent No.1 for the adjournments taken before the Trial Court as also the present proceeding by paying sum of Rs.10,000/- (Rupees Ten Thousand) within one week from today, failing which, the Trial Court shall proceed with the matter as may be advised on the assumption that the attempt of the accused is only to prolong the proceedings, so as to harass the complainant and delay the final decision of the proceedings.

6. Besides, the Applicant shall ensure that he will appear before the Trial Court on 9th January 2006 at 11.00 a.m., on which date, it will be open to the Trial Court to proceed with recording of evidence of defence witness or give some other date, as may be convenient to the Court.

The Applicant shall keep all the witnesses present before the Court on 9th January 2006 to facilitate recording of evidence of the defence witnesses, if the Trial Court so intends.

7. In the event, the Trial Court assigns some other date for recording of evidence of defence witnesses, the Applicant undertakes through his Counsel before this Court that the defence witnesses will be made available on such date and no adjournment on any count will be sought. No adjournment shall be granted on any count. On that assurance the indulgence is shown by setting aside the order passed by the Court below dated 25th July 2005 closing defence evidence. Instead, the Trial Court shall now allow the defence to lead evidence provided the above conditions are fulfilled.

8. Amount of cost to be made over to the Respondent No.1 as referred to above in sum of Rs.10,000/- (Rupees Ten Thousand) shall be deposited in the Trial Court within one week from today, which is condition for passing the above order in favour of the Applicant.

9. All concerned to act on an ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.